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5 Attorneys for
6 COUNTY OF CONTRA COSTA

7
8 UNITED STATES DISTRICT COURT
9 NORTHERN DISTRICT OF CALIFORNIA
10

11 RONALD RICHMAN,

12 Plaintiff,

13 vs.

14 UNITED STATES OF AMERICA,

15 Defendant.
16

CASE NO.: C07-05317-WHA

**ADMINISTRATIVE MOTION
TO CONSIDER WHETHER
CASES SHOULD BE RELATED
PURSUANT TO CIV. L.R. 3-12
& 7-11**

17 Pending before the Federal District Court in San Francisco, in C07-05317-WHA, plaintiff
18 RONALD RICHMAN seeks damages for personal injuries suffered in a motor vehicle accident on
19 October 25, 2005 in Concord California.

20 On July 22, 2008, the County of Contra Costa filed suit against the United States and the US
21 Department of Agriculture in CV 08-3499 MEJ, and a copy of the complaint is attached hereto. The
22 County of Contra Costa was RONALD RICHMAN'S employer at the time of the October 24, 2005
23 incident. In C 08-034499, the County of Contra Costa seeks a subrogation recovery for workers
24 compensation benefits paid to or on behalf of RONALD RICHMAN for injuries alleged to have
25 occurred in the same October 24, 2005 incident that is the subject of Mr. RICHMAN'S action herein.

26
ADMINISTRATIVE MOTION TO CONSIDER WHETHER CASES ARE RELATED

1 The two cases should be considered for consolidated in one action since the same motor
2 vehicle incident that is the subject of Mr. RICHMAN'S action in C07-05317 is the subject of CV 08-
3 3499. The same witnesses would be called by plaintiffs in both actions, since both actions involve
4 the very same incident, and involve the issue of disability and treatment alleged to have been sustained
5 by RONALD RICHMAN in that incident. Consolidation would effect an efficient allocation of court
6 and party resources, in keeping with FRCP §42.

7 DATED: July 23, 2008

8 Respectfully submitted,

9 THOMAS, LYDING, CARTIER & GAUS, LLP

10 By: Mark Cartier
11 MARK A. CARTIER, ESQ.
12 Attorney for
13 COUNTY OF CONTRA COSTA.
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6 Attorneys for Plaintiff,
COUNTY OF CONTRA COSTA.
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8 UNITED STATES DISTRICT COURT
9 NORTHERN DISTRICT OF CALIFORNIA
10 SAN FRANCISCO DIVISION

MEJ

11 COUNTY OF CONTRA COSTA,

12 Plaintiff,

Case No.

CV

08

3499

13 vs.

COMPLAINT FOR DAMAGES
DEMAND FOR JURY TRIAL

14 UNITED STATES OF AMERICA, UNITED
STATES DEPARTMENT OF
15 AGRICULTURE ANIMAL & PLANT
HEALTH INSPECTION SERVICE, PETER
16 LACY, and DOES 1 through 5, inclusive,
17 Defendants.

18 Plaintiff COUNTY OF CONTRA COSTA alleges:

19 Jurisdictional Allegations

20 1. This Court has jurisdiction under 28 USC §1346(b) in that plaintiff seeks damages for the
21 negligence of an employee of the UNITED STATES OF AMERICA and UNITED STATES
22 DEPARTMENT AGRICULTURE ANIMAL & PLANT HEALTH INSPECTION SERVICE in
23 causing a motor vehicle accident.

24 Venue Allegations

25 2. This District Court has venue pursuant to 28 USC §1391(e) in that the motor vehicle
26 accident, which constitutes the event giving rise to this claim, occurred in Concord, California, and

1 therefore the act or omission giving rise to the claim occurred within the Northern District of
2 California.

3 3. Plaintiff COUNTY OF CONTRA COSTA is a county in the State of California and
4 exists within the jurisdictional boundaries of this District Court.

5 4. Defendant PETER LACY is believed to work in or about the County of Contra Costa.

6 Charging Allegations

7 5. On October 24, 2005, plaintiff COUNTY OF CONTRA COSTA was at all times herein
8 mentioned authorized to be lawfully uninsured for workers' compensation liability in California,
9 and was obligated to provide workers' compensation benefits to his employees, including that
10 employee named *Ronald Richman*.

11 6. Plaintiff does not know the true names and capacities of persons sued as DOES 1
12 through 5, inclusive, and therefore sues these defendants by such fictitious names. Plaintiff will
13 amend this Complaint to allege their true names and capacities when ascertained. Plaintiff alleges
14 that each of the fictitiously-named defendants is negligently responsible in some manner for the
15 occurrences herein alleged, and that plaintiff's injuries herein allegedly were proximately caused
16 by that negligence.

17 7. Plaintiff alleges that at all times mentioned herein, each of the defendants was the
18 agent/servant and/or employee of each of the remaining defendants and was, at all times mentioned
19 herein, acting within the purpose and scope of the said agency and employment and each defendant
20 has ratified and approved the acts of his/her agent and/or employee.

21 8. At all times mentioned herein, plaintiff was the employer of *Ronald Richman*. *Ronald*
22 *Richman* was at all times mentioned herein, acting within the course and scope of his employment
23 with the County of Contra Costa.

24 9. PETER LACY was at all times mentioned herein an employee of the UNITED STATES
25 OF AMERICA and UNITED STATES DEPARTMENT AGRICULTURE ANIMAL & PLANT
26 HEALTH INSPECTION SERVICE, and was acting within the course and scope of his

1 employment.

2 10. On October 24, 2005 defendant PETER LACY negligently controlled and operated a
3 motor vehicle so as to drive that vehicle into the vehicle driven by *Ronald Richman* at 550 Sally
4 Ride Drive, Concord, California, proximately causing *Ronald Richman* bodily injury.

5 11. PETER LACY drove the vehicle on October 24, 2005 in the course and scope of his
6 employment with the UNITED STATES OF AMERICA and UNITED STATES DEPARTMENT
7 AGRICULTURE ANIMAL & PLANT HEALTH INSPECTION SERVICE.

8 12. As a direct and proximate result of the negligence and carelessness of defendants, and
9 each of them, and as a direct and proximate result of the injuries of *Ronald Richman*, proximately
10 caused by such negligence and carelessness, plaintiff, COUNTY OF CONTRA COSTA, has paid,
11 and continues to pay, workers' compensation benefits to or on behalf of *Ronald Richman* in an
12 amount to be set forth according to proof. Plaintiff has paid the following amounts to date:

13 86% of salary to *Ronald Richman* for one year in lieu of statutory temporary disability in
14 the sum of \$49,769.00;

15 Statutory temporary disability benefits to *Ronald Richman* apart from 86% salary in the
16 amount of \$20,985.00;

17 Medical payments of \$59,817.00;

18 Permanent disability advances of \$6,851.00.

19 Thus, to date, plaintiff has paid \$137,422.00 in workers' compensation benefits to or on
20 behalf of *Ronald Richman*.

21 As a proximate result of defendants negligence, property damage in the amount of
22 \$1,989.66 was caused to plaintiff's vehicle driven by *Ronald Richman* at the time of the 10-24-05
23 incident.

24 13. Plaintiff anticipates that it will pay permanent disability indemnity in an amount that
25 has not yet been determined by the California Workers' Compensation Appeals Board. Plaintiff
26 believes that the medical expenses and workers' compensation indemnity will increase.

1 14. On October 22, 2007 plaintiff filed a Claim For Damage, Injury, or Death (Standard
2 Form 95) with the UNITED STATES DEPARTMENT AGRICULTURE ANIMAL & PLANT
3 HEALTH INSPECTION SERVICE at Butler Square, 100 North 6th Street, Minneapolis MN
4 55403-11588 reflected in the attached Exhibit A.

5 15. There has been no response to the Claim For Damage, Injury, or Death (Standard Form
6 95) and pursuant to 28 USC §2675(a), the claim has been denied.

7 16. Plaintiff has a right to a subrogation recovery under California Labor Code §§3850 et
8 seq. Labor Code §3852 provides in pertinent part that, "any employer who pays, or becomes
9 obligated to pay compensation... may likewise make a claim or bring an action against the third
10 person."

11 WHEREFORE, plaintiff demands judgment from the defendants, and each of them, as
12 follows:

- 13 1. General damages in the amount of sum \$200,000;
- 14 2. Property damage in the sum of \$1,989.66;
- 15 3. For all reasonable and necessary workers compensation benefits paid to or on behalf of
16 Ronald Richman according to proof;
- 17 4. Costs of suit;
- 18 5. All other just relief.

19 DATED: July 22, 2008

20 Respectfully Submitted,

21 THOMAS, LYDING, CARTIER & GAUS

22 By: Mark Cartier

23 MARK A. CARTIER, ESQ.
24 Attorney for Plaintiff,
25 COUNTY OF CONTRA COSTA.

Demand for Jury Trial

Plaintiff hereby demands a jury trial as provided by Rule 38a of the Federal Rules of Civil Procedure.

DATED: July 22, 2008

Respectfully Submitted,

THOMAS, LYDING, CARTIER & GAUS

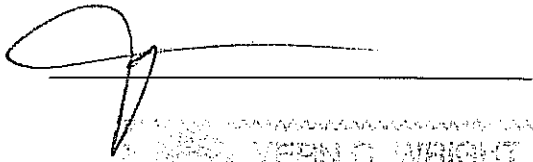
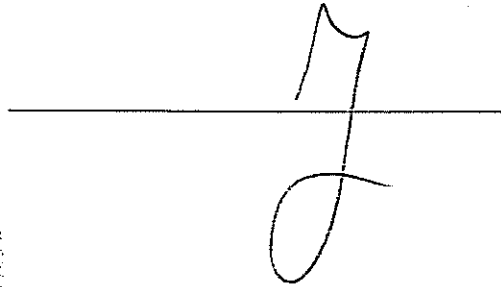
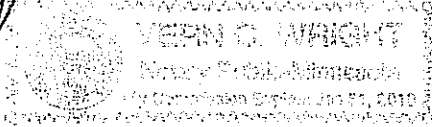
By: Mark A. Cartier

MARK A. CARTIER, ESQ.
Attorney for Plaintiff,
COUNTY OF CONTRA COSTA.

STATE OF MINNESOTA)ss
COUNTY OF DAKOTA)

ANDY LONERGAN, being duly sworn, on oath,
says that on the 19TH day of OCTOBER, 2007, he personally served the
attached CLAIM FOR DAMAGE, INJURY, OR DEATH;
ADDENDUM TO CLAIM FOR DAMAGE, INJURY, OR DEATH;
AUTHORITY TO FILE CLAIM; EXHIBIT
upon UNITED STATES DEPARTMENT OF AGRICULTURE/APHIS/ MRP
at BUTLER SQUARE, 100 NORTH 6TH STREET, MINNEAPOLIS, MN 55403-1588
County of HENNEPIN, State of Minnesota,
by handing to and leaving with
KEN LENERS-MANAGING AGENT, authorized to accept service,
a true and correct copy.

Subscribed and Sworn to Before Me
this 22ND day of OCTOBER, 2007.

ARDEN PROCESS SERVICES, INC.

RE: COUNTY OF CONTRA COSTA VS U.S. DEPARTMENT OF AGRICULTURE

EXHIBIT

A

CLAIM FOR DAMAGE, INJURY, OR DEATH		INSTRUCTIONS: Please read carefully the instructions on the reverse side and supply information requested on both sides of the form. Use additional sheet(s) if necessary. See reverse side for additional instructions.		FORM APPROVED OMB NO. 1105-0008	
1. Submit To Appropriate Federal Agency: United States Department of Agriculture Animal and Plant Health Inspection Service California Wildlife Services State Director 3419-A Arden Way, Sacramento, CA 95825			2. Name, Address of claimant and claimant's personal representative, if any. (See instructions on reverse.) (Number, street, city, State and Zip Code) Claimant County: 2530 Arnold Dr., # 140, Martinez, CA 94553 Attorney: Thomas, Lyding, Cartier & Gaus, P.O. Box 8072, Walnut Creek, CA 94597		
3. TYPE OF EMPLOYMENT <input type="checkbox"/> MILITARY <input checked="" type="checkbox"/> CIVILIAN		4. DATE OF BIRTH N/A		5. MARITAL STATUS N/A	
		6. DATE AND DAY OF ACCIDENT 10-24-05		7. TIME (A.M. or P.M.) PM	
8. Basis of Claim (State in detail the known facts and circumstances attending the damage, injury, or death, identifying persons and property involved, the place of occurrence and the cause thereof) (Use additional pages if necessary.) Peter Lacy was an employee of the US Department of Agriculture, Animal and Plant Health Inspection Service, Wildlife Services, and Ronald Richman was an employee of the County of Contra Costa. On 10-24-05 at Buchanan Field in Contra Costa County, California, Ronald Richman was driving a vehicle, and was struck by the vehicle negligently driven by Peter Lacy. Peter Lacy drove his vehicle into the rear of the vehicle Ronald Richman was driving. The County of Contra Costa has provided workers compensation benefits to or on behalf of Ronald Richman for the injury sustained in the 10-24-05 incident. There was property damage to the vehicle owned by the County of Contra Costa and driven by Ronald Richman.					
9. PROPERTY DAMAGE					
NAME AND ADDRESS OF OWNER, IF OTHER THAN CLAIMANT (Number, street, city, State, and Zip Code) County of Contra Costa, 2530 Arnold Drive, #140, Martinez, CA 94553.					
BRIEFLY DESCRIBE THE PROPERTY, NATURE AND EXTENT OF DAMAGE AND THE LOCATION WHERE PROPERTY MAY BE INSPECTED. (See instructions on reverse side.) Damage to the rear of the vehicle driven by Ronald Richman, and to the front of the vehicle driven by Peter Lacy.					
10. PERSONAL INJURY/WRONGFUL DEATH					
STATE NATURE AND EXTENT OF EACH INJURY OR CAUSE OF DEATH, WHICH FORMS THE BASIS OF THE CLAIM. IF OTHER THAN CLAIMANT, STATE NAME OF INJURED PERSON OR DECEDENT. Ronald Richman alleges that he sustained a cervical disc herniation and shoulder strain. He also alleges a psychiatric injury as a consequence of the orthopedic claim.					
11. WITNESSES					
NAME		ADDRESS (Number, street, city, State, and Zip Code)			
Tom Rasmussen		1305 N. H. PMB 321, Lompoc, CA 93436			
12. (See instructions on reverse) AMOUNT OF CLAIM (In dollars)					
12a. PROPERTY DAMAGE 1,989.66		12b. PERSONAL INJURY 200,000.00		12c. WRONGFUL DEATH 12d. TOTAL (Failure to specify may cause forfeiture of your rights.) 201,989.66	
I CERTIFY THAT THE AMOUNT OF CLAIM COVERS ONLY DAMAGES AND INJURIES CAUSED BY THE ACCIDENT ABOVE AND AGREE TO ACCEPT SAID AMOUNT IN FULL SATISFACTION AND FINAL SETTLEMENT OF THIS CLAIM.					
13a. SIGNATURE OF CLAIMANT (See instructions on reverse side.) <i>Mark Carter Mark Cartier Attorney for County of Contra Costa</i>				13b. Phone number of signatory (925) 930-7270	
				14. DATE OF CLAIM 10-16-2007	
CIVIL PENALTY FOR PRESENTING FRAUDULENT CLAIM The claimant shall forfeit and pay to the United States the sum of \$2,000 plus double the amount of damages sustained by the United States. (See 31 U.S.C. 3729.)			CRIMINAL PENALTY FOR PRESENTING FRAUDULENT CLAIM OR MAKING FALSE STATEMENTS Fine of not more than \$ 10,000 or imprisonment for not more than 5 years or both. (See 18 U.S.C. 287, 1001.)		

PRIVACY ACT NOTICE

This Notice is provided in accordance with the Privacy Act, 5 U.S.C. 552a(e)(3), and concerns the information requested in the letter to which this Notice is attached.

A. Authority: The requested information is solicited pursuant to one or more of the following: 5 U.S.C. 301, 38 U.S.C. 501 et seq., 28 U.S.C. 2671 et seq., 28 C.F.R.

B. Principal Purpose: The information requested is to be used in evaluating claims.
C. Routine Use: See the Notices of Systems of Records for the agency to whom you are submitting this form for this information.
D. Effect of Failure to Respond: Disclosure is voluntary. However, failure to supply the requested information or to execute the form may render your claim

INSTRUCTIONS

Complete all items - insert the word NONE where applicable

A CLAIM SHALL BE DEEMED TO HAVE BEEN PRESENTED WHEN A FEDERAL AGENCY RECEIVES FROM A CLAIMANT, HIS DULY AUTHORIZED AGENT, OR LEGAL REPRESENTATIVE AN EXECUTED STANDARD FORM 95 OR OTHER WRITTEN NOTIFICATION OF AN INCIDENT, ACCOMPANIED BY A CLAIM FOR MONEY DAMAGES IN A SUM CERTAIN FOR INJURY TO OR LOSS OF

PROPERTY, PERSONAL INJURY, OR DEATH ALLEGED TO HAVE OCCURRED BY REASON OF THE INCIDENT. THE CLAIM MUST BE PRESENTED TO THE APPROPRIATE FEDERAL AGENCY WITHIN TWO YEARS AFTER THE CLAIM ACCRUES.

Any instructions or information necessary in the preparation of your claim will be furnished, upon request, by the office indicated in Item #1 on the reverse side. Complete regulations pertaining to claims asserted under the Federal Tort Claims Act can be found in Title 28, Code of Federal Regulations, Part 14. Many agencies have published supplemental regulations also. If more than one agency is involved, please state each agency.

The claim may be filed by a duly authorized agent or other legal representative, provided evidence satisfactory to the Government is submitted with said claim establishing express authority to act for the claimant. A claim presented by an agent or legal representative must be presented in the name of the claimant. If the claim is signed by the agent or legal representative, it must show the title or legal capacity of the person signing and be accompanied by evidence of his/her authority to present a claim on behalf of the claimant as agent, executor, administrator, parent, guardian or other representative.

If claimant intends to file claim for both personal injury and property damage, claim for both must be shown in Item 12 of this form.

The amount claimed should be substantiated by competent evidence as follows:

(a) In support of the claim for personal injury or death, the claimant should submit a written report by the attending physician, showing the nature and extent of injury, the nature and extent of treatment, the degree of permanent disability, if any, the prognosis, and the period of hospitalization, or incapacitation, attaching itemized bills for medical, hospital, or burial expenses actually incurred.

(b) In support of claims for damage to property which has been or can be economically repaired, the claimant should submit at least two itemized signed statements or estimates by reliable, disinterested concerns, or, if payment has been made, the itemized signed receipts evidencing payment.

(c) In support of claims for damage to property which is not economically repairable, or if the property is lost or destroyed, the claimant should submit statements as to the original cost of the property, the date of purchase, and the value of the property, both before and after the accident. Such statements should be by disinterested competent persons, preferably reputable dealers or officials familiar with the type of property damaged, or by two or more competitive bidders, and should be certified as being just and correct.

(d) Failure to completely execute this form or to supply the requested material within two years from the date the allegations accrued may render your claim "invalid". A claim is deemed presented when it is received by the appropriate agency, not when it is mailed.

Failure to specify a sum certain will result in invalid presentation of your claim and may result in forfeiture of your rights.

Public reporting burden for this collection of information is estimated to average 15 minutes per response, including the time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information. Send comments regarding this burden estimate or any other aspect of this collection of information, including suggestions for reducing this burden,

to Director, Torts Branch

Civil Division

U.S. Department of Justice

Washington, DC 20530

and to the

Office of Management and Budget

Paperwork Reduction Project (1105-0008)

Washington, DC 20503

INSURANCE COVERAGE

In order that subrogation claims may be adjudicated, it is essential that the claimant provide the following information regarding the insurance coverage of his vehicle or property.

15. Do you carry accident insurance? ☐ Yes, If yes, give name and address of insurance company (Number, street, city, State, and Zip Code) and policy number. ☒ No

The County of Contra Costa is permissibly uninsured for workers compensation liability, and it has provided workers compensation benefits to or on behalf of Ronald Richman for the 10-24-05 incident; the address for the County of Contra Costa is 2530 Arnold Drive, #140, Martinez, CA 94553. The adjuster is Maria Faint, (925) 335-1410.

16. Have you filed claim on your insurance carrier in this instance, and if so, is it full coverage or deductible?

No.

17. If deductible, state amount

N/A

18. If claim has been filed with your carrier, what action has your insurer taken or proposes to take with reference to your claim? (It is necessary that you ascertain these facts)

N/A

19. Do you carry public liability and property damage insurance? ☐ Yes, If yes, give name and address of insurance company (Number, street, city, State, and Zip Code) ☒ No

The County of Contra Costa is permissibly uninsured for workers' compensation liability under the laws of the State of California

Re: COUNTY OF CONTRA COSTA v. U. S. Department of Agriculture

ADDENDUM
to Claim for Damage, Injury or Death (Form 95)

As of October 16, 2007, the County has paid to or on behalf of Ronald Richman the following amounts in workers' compensation benefits for the effects of the 10-24-05 incident: doctors visits of \$15,322.25, medical appliances \$238.00, physical therapy of \$1,690.09, hospital expenses of \$24,614.78, pharmacy expenses of \$166.27, anesthesiologist \$950.48, utilization review charges of \$1,466.25, Nurse case management fees of \$5,925.00, diagnostic testing of \$746.75, PPO fee of \$54.18, and temporary disability/salary in lieu of temporary disability of \$50,144.84. The County anticipates that it will pay permanent disability in an amount that has not yet been determined by the Workers' Compensation Appeals Board.

Mr. Richman had neck surgery in January 2007, so the County believes that the medical expenses, and workers' compensation indemnity will increase.

1 THOMAS, LYDING, CARTIER & GAUS, LLP
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3 Walnut Creek, CA 94597
Telephone (925) 930-7270
4 Facsimile (925) 256-8148

5 Attorneys for Claimant,
COUNTY OF CONTRA COSTA.

10 COUNTY OF CONTRA COSTA,

11 Claimant,

12 vs.

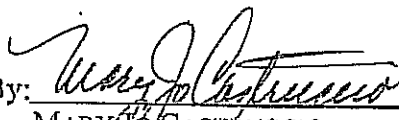
13 U. S. DEPARTMENT OF AGRICULTURE,

14 Respondant.

AUTHORITY TO FILE CLAIM

15 I, Mary Jo Castruccio, am the Workers Compensation Claims Manager for the County of
16 Contra Costa Risk Management. I am a duly authorized agent on behalf of the County of Contra
17 Costa, and I have the power and authority to file, adjust, and settle claims for and on behalf of the
18 County of Contra Costa. The law firm of Thomas, Lyding, Cartier, & Gaus has the power and
19 authority to file and litigate the subrogation claim made on behalf of the County of Contra Costa,
20 arising out of the 10-24-05 motor vehicle accident in which County of Contra Costa employee Ronald
21 Richman sustained injuries after the vehicle he was driving was struck by a vehicle driven by U. S.
22 Department of Agriculture employee Peter Lacy.

23 DATED: 10/17/, 2007.

25 By: 
MARY JO CASTRUCCIO
COUNTY OF CONTRA COSTA.